

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEPHEN BENIGNO, et al. :
 :
 : CIVIL ACTION
 :
 v. :
 : NO. 04-CV-2142
 :
 JEFFREY WOJTYLAK, et al. :

SURRICK, J.

APRIL 5, 2006

MEMORANDUM & ORDER

Presently before the Court is Defendants' Motion To Dismiss Pursuant to FRCP 12(b)(6) And/Or Motion For Summary Judgment Pursuant to FRCP 56 (Doc. No. 13). For the following reasons, the Motion will be granted.

I. BACKGROUND

Defendant Jeffrey Wojtylak was a security guard employed by Defendant Statewide Security Group, Inc. ("Statewide"). Wojtylak's responsibilities were to patrol the grounds of the Byberry State Hospital to ensure that there were no trespassers on the property. (Wojtylak Dep. at 17-20.) If Wojtylak encountered a trespasser on the property, he was instructed to call the police, who would then come and arrest the trespasser. Employees of Statewide did not have the authority to arrest and did not carry weapons. On February 7, 2003, at approximately 8:00 p.m., Wojtylak and his supervisor, Jeremiah Cotton, observed two trespassers riding all-terrain vehicles (ATVs) on the hospital's grounds. The two trespassers drove their ATVs over a foot bridge that crosses Roosevelt Boulevard. The truck that Wojtylak and Cotton were driving was not able to cross the bridge, and so they ended their pursuit of the trespassers. Wojtylak called the police and informed them that there were trespassers on the property. (*Id.* at 71-74.) A short

time later, Wojtylak and Cotton saw the same two trespassers sitting on their ATVs at the edge of the same bridge. (*Id.* at 78.) At this point, Wojtylak got out of his vehicle and approached the individuals. He instructed them not to go anywhere because the police had been called. (*Id.* at 78-81.) The trespassers stated that they were not going to be arrested and they started up their ATVs. (*Id.* at 82.) One of the trespassers then drove his ATV at Wojtylak. Wojtylak grabbed onto the front of the ATV. The force of the ATV caused Wojtylak to fall back into the snow. (*Id.* at 194-98.) The two riders then drove off. (*Id.* at 84-92.)

After the incident, Wojtylak and his co-worker contacted the police again and gave the police a description of the trespassers. According to the Philadelphia Police Department's incident report, the assailant was described as a white male, age twenty, wearing black clothing and riding a black ATV. (Doc. No. 13 at Ex. C.) The local Town Watch volunteers had picked up the radio transmission to the Philadelphia police regarding the assailant. Christopher McCormick, one of the volunteers, saw two individuals on ATVs near the hospital grounds on Roosevelt Boulevard. McCormick then went to the Statewide security trailer to see if any help was needed there. (McCormick Dep. at 16-17.) The volunteers went back on patrol and McCormick noticed an SUV and trailer parked a short distance from the hospital grounds. The trailer was illegally parked. (Wojtylak Dep. at 164.) McCormick and his partner waited, and around 11:00 p.m. they observed Stephen Benigno loading a black and green ATV onto his trailer. (McCormick Dep. at 18-21.) At the time of the incident, Benigno, a white male, was thirty-eight years old and wearing dark clothing. The volunteers contacted Statewide security guard Dwayne O'Brien, and described Benigno and the trailer. (*Id.* at 17-21.) When the volunteers confronted Benigno, Benigno denied that he had been on the hospital grounds or that

he knocked Wojtylak down. (Benigno Dep. at 109-10.) Eventually, O'Brien, Wojtylak, and Cotton all arrived at the site of Benigno's trailer. Benigno attempted to leave but the security guards and Town Watch volunteers blocked Benigno's trailer so that he could not drive away. The police arrived and Wojtylak identified Benigno as the assailant. (*Id.* at 136-38.) Cotton also indicated that Benigno was the assailant. (O'Brien Dep. at 38.) Benigno was arrested and escorted to the police department.

Benigno was charged with aggravated assault, simple assault, recklessly endangering another person, and defiant trespass. On March 18, 2003, the aggravated assault charge was dismissed by the Honorable James DeLeon at Benigno's preliminary hearing. On August 5, 2003, Benigno was tried before the Honorable Seamus P. McCaffrey in Philadelphia Municipal Court. Judge McCaffrey found Benigno not guilty on the remaining charges.

Plaintiffs filed the instant action against Defendants, alleging false arrest, false imprisonment, and malicious prosecution. Defendants have moved for summary judgment.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party moving for summary judgment bears the initial burden of demonstrating that there are no facts supporting the nonmoving party's legal position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). Once

the moving party carries this initial burden, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e); *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (explaining that the nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts”). “The nonmoving party . . . ‘cannot rely merely upon bare assertions, conclusory allegations or suspicion’ to support its claim.” *Townes v. City of Phila.*, Civ. A. No. 00-CV-138, 2001 U.S. Dist. LEXIS 6056, at *4 (E.D. Pa. May 11, 2001) (quoting *Fireman’s Ins. Co. v. DeFresne*, 676 F.2d 965, 969 (3d Cir. 1982)). Rather, the party opposing summary judgment must go beyond the pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. When deciding a motion for summary judgment, the court must view facts and inferences in the light most favorable to the nonmoving party. *Anderson*, 477 U.S. at 255; *Siegel Transfer, Inc. v. Carrier Express, Inc.*, 54 F.3d 1125, 1127 (3d Cir. 1995). However, we will not resolve factual disputes or make credibility determinations. *Siegel Transfer, Inc.*, 54 F.3d at 1127.

III. LEGAL ANALYSIS

A. Malicious Prosecution

Defendants contend that Plaintiffs have not stated a cause of action for malicious prosecution. “A cause of action for malicious prosecution has three elements. The defendant must have instituted proceedings against the plaintiff 1) without probable cause, 2) with malice, and 3) the proceedings must have terminated in favor of the plaintiff.” *Kelley v. Gen. Teamsters, Local Union 249*, 544 A.2d 940, 941 (Pa. 1988). Pennsylvania law recognizes the liability of a private individual for malicious prosecution if: “(a) he initiates or procures the [institution of

criminal] proceedings without probable cause and primarily for a purpose other than that of bringing the offender to justice, and (b) the proceedings have terminated in favor of the accused.” *Bradley v. Gen. Accident Ins. Co.*, 778 A.2d 707, 710 (Pa. Super. Ct. 2001) (quoting *Tomaskevitch v. Specialty Records Corp.*, 717 A.2d 30, 33 (Pa. Cmwlth. Ct. 1998)). A private individual will be liable for malicious prosecution if he “provides knowingly false statements to an official to initiate charges or directs or pressures an official to initiate charges, thereby making the officer’s intelligent use of discretion impossible.” *Id.* at 711 (citing Restatement (Second) Torts § 653 cmt. g).

Plaintiffs base their malicious prosecution claim on the allegation that Wojtylak knowingly provided false information to the police officers about the identity of his assailant, thus initiating the charges against Benigno. Defendants argue that there is no evidence that Wojtylak knowingly provided false information to the police. Defendants contend that at most, the record reveals a misidentification of Benigno by Wojtylak and there is no cognizable claim for negligent identification in Pennsylvania.¹ (Doc. No. 13 at 6-7.)

¹ Defendants also argue that Plaintiffs are “estopped” from arguing a lack of probable cause because Benigno was held over for trial after a preliminary hearing before Honorable DeLeon, thus demonstrating that there was probable cause for Benigno’s arrest. (Doc. No. 13 at 9-12.) In *Cosmas v. Bloomingdales Bros., Inc.*, 660 A.2d 83, 86 (Pa. Super. Ct. 1995), the Superior Court of Pennsylvania noted that while a *conviction* may serve as conclusive evidence of the existence of probable cause, “the action of a district justice or magistrate in holding the plaintiff over to be tried in court is not similarly conclusive.” *Id.* (citing Restatement (Second) Torts § 663(2)). The court reasoned that although “[i]t is true that a holding-over represents a decision by a neutral and experienced judicial officer that the prosecution has made out a prima facie case,” the determination of a prima facie case “does not necessarily equal a finding of probable cause such as will bar an action for malicious prosecution.” *Id.* However, because we conclude that probable cause existed based on the evidence in the record, we need not address the sufficiency of Defendants’ estoppel argument.

Restatement (Second) Torts § 668 states that “the proceedings must have been initiated primarily for a purpose other than that of bringing an offender to justice.” Restatement (Second) Torts § 668; *see also Cassady v. Dillard Dep’t. Stores*, 167 F.3d 1215, 1219 (8th Cir. 1999); *Campbell v. City of San Antonio*, 43 F.3d 973, 981 (5th Cir. 1995). Comment c of § 668 notes that a jury should determine whether the ulterior purpose was the primary one only when there is evidence that “some other purpose” played a “substantial part” in influencing the individual’s decision to initiate proceedings against the plaintiff. Restatement (Second) Torts § 668 cmt. c. Lack of probable cause for the initiation of the criminal proceedings is evidence that a defendant did not initiate the proceedings for a proper purpose. *Id.* § 669.

If Wojtylak did have probable cause to initiate the criminal proceedings against Benigno, however, Plaintiffs’ claim for malicious prosecution must fail. *See, e.g., Jaindl v. Mohr*, 637 A.2d 1353, 1357 (Pa. Super. Ct. 1994). “Probable cause in the context of the tort of malicious prosecution does not require proof beyond a reasonable doubt, but rather, is defined as ‘a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that a party is guilty of the offense.’” *Strickland v. Univ. of Scranton*, 700 A.2d 979, 984 (Pa. Super. Ct. 1997) (citing *Cosmas*, 660 A.2d at 86). While the issue of whether probable cause existed is a question for the court, where there are material facts in controversy, it is the duty of the jury “to say whether the plaintiff in the civil action has shown want of probable cause upon the part of the defendant.” *Wainauskis v. Howard Johnson Co.*, 488 A.2d 1117, 1122 (Pa. Super. Ct. 1985) (quoting *Hubert v. Alta Life Ins. Co.*, 7 A.2d 98, 100 (Pa. Super. Ct. 1939)).

Plaintiffs contend that Wojtylak was trying to please his supervisor, Jeremiah Cotton, on the night of the incident, and that this induced Wojtylak to knowingly lie about the identity of his assailant. (Doc. No. 15 at 7-12.) In support of this allegation, Plaintiffs offer the testimony of one of Wojtylak's co-workers, Dwayne O'Brien, who stated at his deposition that Wojtylak "looked for [Cotton's] approval of everything at the site." O'Brien also stated that Wojtylak initially indicated that Benigno may not have been the assailant, but that Wojtylak then stated he was "pretty sure" that Benigno was the assailant. According to O'Brien, Cotton also identified Benigno as the assailant. O'Brien offered the opinion that Wojtylak identified Benigno as the assailant in order to gain Cotton's approval. (O'Brien Dep. at 37-40.)

Even if we construe this testimony in the light most favorable to Plaintiffs, it fails to demonstrate that Wojtylak lacked probable cause to initiate the criminal proceedings against Benigno. Both Cotton and Wojtylak twice saw two men in dark clothing riding their ATVs illegally on the hospital grounds on the evening of February 7th. On the second occasion, Wojtylak was assaulted by one of the two men. He had the opportunity to see his assailant up close. Wojtylak learned from the Town Watch volunteers' dispatch that they had observed Benigno loading his ATV onto his trailer a few hours later a short distance from the hospital grounds and that Benigno was wearing dark clothing. (Wojtylak Dep. at 113-14.) When Wojtylak arrived at the scene of Benigno's trailer, he saw Benigno and believed that Benigno was the individual who attacked him earlier that night. (*Id.* at 137-38.)

While it may be true that Wojtylak was at least partially motivated by a desire to impress Cotton, this does not nullify the existence of probable cause. "An improper purpose of the accuser in initiating or continuing the proceeding is not evidence that he did not have probable

cause to do so.” Restatement (Second) Torts § 669A. “[I]t may not be inferred from evidence of an improper purpose alone that there was not probable cause; and the burden of proving the latter by independent evidence remains upon the plaintiff.” *Id.* at cmt. b; *see also Bruch v. Clark*, 507 A.2d 854, 856 (Pa. Super. Ct. 1986) (“[I]f probable cause is found to exist, the prosecutor’s motive, malicious or otherwise, is immaterial.”). We are compelled to conclude that Plaintiffs have not met their burden to prove that there was a lack of probable cause in this instance. Indeed, the record clearly indicates that Wojtylak did in fact have probable cause to initiate the criminal proceedings against Benigno. Plaintiffs have also failed to provide evidence demonstrating that Wojtylak knowingly provided false information to the police regarding the identity of his assailant. O’Brien’s speculation regarding a possible motive for Wojtylak to lie to the police, even if admissible, is not enough. Accordingly, we will grant Defendants’ Motion for summary judgment with respect to the malicious prosecution claim.

B. False Arrest and False Imprisonment

Defendants contend that as a matter of law Plaintiffs’ claims for false arrest and false imprisonment must also be dismissed.

Under Pennsylvania law, a false arrest is defined as 1) an arrest made without probable cause or 2) an arrest made by a person without privilege to do so. The elements of false imprisonment are 1) the detention of another person, and 2) the unlawfulness of such detention. Such detention is unlawful if it is a consequence of a false arrest.

Brockington v. City of Phila., 354 F. Supp. 2d 563, 572 n.10 (E.D. Pa. 2005) (internal citations omitted). Defendants argue that because there was probable cause for Benigno’s arrest, Plaintiffs’ claims must be defeated. As discussed above, we have concluded that Wojtylak had probable cause to initiate the criminal proceedings against Benigno. Consequently, there was

probable cause for Benigno's arrest and imprisonment. *See Gilbert v. Feld*, 842 F. Supp. 803, 821 (E.D. Pa. 1993). We will therefore grant Defendants' Motion for summary judgment with respect to the false arrest and false imprisonment claims.

An appropriate Order follows.

